

### REMARKS

This Response is being submitted in reply to the non-final Office Action dated April 29, 2009, issued in connection with the above-identified patent application. A terminal disclaimer under 37 CFR 1.321 accompanies this Response. Claims 1, 2, 6, 12-14, 22, 23, 27 and 33-35 are presently pending in the present application. By this Amendment, no claims have been amended and no new matter has been introduced. Favorable reconsideration is respectfully requested.

In the Office Action, claims 1 and 22 have been provisionally rejected on grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1 and 19 of copending application no. 10/712,372.

A rejection based on a nonstatutory obviousness-type double patenting can be avoided by filing a terminal disclaimer in the application or proceeding in which the rejection is made. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Knohl*, 386 F.2d 476, 155 USPQ 586 (CCPA 1967); and *In re Griswold*, 365 F.2d 834, 150 USPQ 804 (CCPA 1966).

The use of a terminal disclaimer in overcoming a nonstatutory obviousness-type double patenting rejection is in the public interest because it encourages the disclosure of additional developments, the earlier filing of applications, and the earlier expiration of patents whereby the inventions covered become freely available to the public. *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968); *In re Eckel*, 393 F.2d 848, 157 USPQ 415 (CCPA 1968); and *In re Braithwaite*, 379 F.2d 594, 154 USPQ 29 (CCPA 1967).

Accordingly, the Applicants hereby file a terminal disclaimer in order to disclaim the term of any patent granted based on the present application which would extend beyond the expiration date of co-pending application no. 10/712,372. Accordingly, withdrawal of the rejection to claims 1 and 22 based on nonstatutory obviousness-type double patenting is now respectfully requested.

No other objections or rejections have been noted in the Office Action.

In light of the above, the Applicants respectfully submit that all the pending claims are patentable over the prior art of record. The Applicants respectfully request that the Examiner withdraw the rejections presented in the outstanding Office Action, and pass this application to issue. The Examiner is invited to contact the undersigned attorney by telephone to resolve any remaining

issues.

Respectfully submitted,

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